

Appendix M: Assessment of Chapter 54 of Title 38.2 of the Code of Virginia

Chapter 54 of Title 38.2 of the Code of Virginia outlines the utilization review standards and appeals that are applicable to all entities in the Commonwealth who perform utilization review. This law was passed in 1995.

The American Accreditation HealthCare Commission/URAC has released utilization management standards that correspond to the provisions in Chapter 54. First published in 1991 and updated in 1994 and June 1997, these 35 standards provide companies with guidelines on developing utilization management programs. Georgia, Iowa, Maine, Nebraska, New Hampshire, and the District of Columbia currently require AAHC/URAC accreditation for licensure. Several other states recognize AAHC/URAC accreditation and exempt companies with this accreditation from certain state oversight requirements.

The National Committee for Quality Assurance (NCQA) has also published standards for accreditation of managed care organizations. These standards encompass guidelines for utilization management as well as guidelines for five other areas. Nine standards and their associated recommendations outline the NCQA evaluation process for UR programs.

In addition, Beth Hadley of the National Association of Insurance Commissioners (NAIC) was contacted. NAIC has produced a Utilization Review Model Act that established standards and criteria for the structure and operation of utilization review processes. They have also completed a review of all similar and related UR laws and regulations for each state. According to NAIC, currently only three states (Colorado, Maine, and Washington) have enacted legislation or regulations that follow the NAIC model or something very similar to it (April 1997 NAIC report). Most states, including Virginia, have legislation or regulations that are related to the NAIC model. Much legislation surrounding UR was discussed during the most recent state legislative sessions, as more states are debating the adequacy of current UR processes.

A comparison of Chapter 54 provisions and the NAIC model follows:

Response Times:	Virginia	NAIC Model
First Adverse Decision	2 working days	24 hours (telephone) 24 hours (concurrent) 5 working days (retrospect.)
Reconsideration	10 working days	1 working day
Appeal	60 working days	20 working days
Annual Submission of Appeals Required?	No	Yes
UR Criteria subject to regulatory review?	Yes	Yes
Clinical Peer required for adverse determinations?	No	Yes
Coordination required with Grievance Procedures?	No	Yes
Must consumer be notified of adverse determination?	No	Yes
Are UR criteria available to the consumer?	No	Yes
Peer review of appeal required by previously uninvolved peer?	Yes, except for expedited appeals	Yes for all appeals
Required coverage for emergency services authorized by participating provider or authorized employee?	Yes	Yes
Disclosure of UR appeals procedure required to be in EOC or other member materials?	No	Yes
Penalties for non-compliance?	No	Yes

Source: Virginia Department of Health

Methodology

In order to assess the adequacy of Chapter 54 of Title 38.2 of the Code of Virginia, a short survey was designed by the Department of Health Evaluation Sciences in consultation with the Bureau of Insurance and the Virginia Department of Health. The purpose of the survey was to assess the number of times that companies had used the provisions of Chapter 54, reasons for using or not using the provisions of Chapter 54, and willingness to provide information about Chapter 54 proceedings to the Bureau of Insurance. The instrument was faxed to all HMO plans (32) and the top 200 non-HMO indemnity plans based on premium volume. Plans were instructed to complete the survey and return it to the Bureau of Insurance. All survey information was entered into a database for analysis.

Analysis

We received usable responses from 106 non-HMO companies and 14 HMOs, resulting in a 52% response rate. The response rate is moderately high, especially given the short time allowed for data collection. Each question in the survey has been answered using responses from the companies, separated by type of plan. (*NA stands for not applicable.)

Activity Undertaken Pursuant to Chapter 54 of Title 38.2 of the Code of Virginia

1. Has your organization reconsidered any adverse decisions as provided in 38.2-5407 in the past 12 months?

Yes:	12 HMO	No:	1 HMO	No answer/NA:	1 HMO
	8 non-HMO		62 non-HMO		36 non-HMO

If yes, how many: HMO range - 12 to 482 (mean 103)
Non-HMO range - 2 to 73 (mean 22)

2. Has your organization conducted any appeals of adverse decisions as provided in 38.2-5408 in the past 12 months?

Yes:	11 HMO	No:	3 HMO	No answer/NA:	0 HMO
	7 non-HMO		63 non-HMO		36 non-HMO

If yes, how many: HMO range - 1 to 781 (mean 88)
Non-HMO range - 1 to 37 (mean 22)

3. Has your organization conducted any expedited appeals as provided in 38.5408 in the past 12 months?

Yes: 4 HMO **No:** 10 HMO **No answer/NA:** 0 HMO
4 non-HMO 66 non-HMO 36 non-HMO

If yes, how many: HMO range - 1 to 175 (mean 38)
Non-HMO range - 3 to 25 (mean 11)

4. Would you be willing to provide copies of the above proceedings (with names excised) to the Bureau of Insurance if requested?

Yes: 10 HMO **No:** 2 HMO **No answer/NA:** 2 HMO
17 non-HMO 19 non-HMO 70 non-HMO

5. If you HAVE NOT used the processes provided in Chapter 54, please state the reason:

Were not aware of its passage: No answers recorded

Have not had requests under this statute: 1 HMO, 12 non-HMO

Chapter 54 does not apply to the type of coverage written by the company (for non-HMOs only): 49 non-HMO

All appeals are handled under Chapter 43 of the Code of Virginia (HMOs only):
No answers recorded

Dissatisfied with the Statute: 1 non-HMO

Other: 1 HMO, 6 non-HMO

No answer/Not applicable: 12 HMO, 38 non-HMO

6. If you HAVE used the processes provided in Chapter 54, please state how satisfied you were with the process.

Very satisfied: 1 HMO, 5 non-HMO
Somewhat satisfied: 2 HMO
Neutral: 10 HMO, 11 non-HMO
Somewhat dissatisfied: 1 HMO
Very dissatisfied:

No answer/not applicable: 90 non-HMO

7. Do you inform your plan's providers about Chapter 54 and its processes?

Yes:	13 HMO	No:	0 HMO	No answer/NA:	1 HMO
	15 non-HMO		17 non-HMO		74 non-HMO

If yes, how do you inform them?

HMOs (multiple answers were allowed)

Provider handbooks - 5

Send information to providers when applicable - 1

Provider newsletter - 3

Correspondence with provider - 2

Provider is given information (mode not specified) - 3

No answer - 1

non-HMOs

Informed in denial or appeal letters - 6

Informed in writing (type of letter not specified) - 3

Insured provided with information (mode not specified) - 7

Enrollment brochure or benefit booklet - 3

No answer/not applicable - 87

Conclusions: The survey used in this analysis was designed for educational purposes, not for rigorous scientific study. Therefore, we would not want to make generalizations about the use (or non-use) of Chapter 54 in Virginia. However, there are certain facts that merit added emphasis:

- In the non-HMO group, 49 companies reported that Chapter 54 does not apply to the type of coverage written by the company.
- In addition, 38 respondents stated they don't do utilization review, so they are exempt from the provisions of Chapter 54. These companies sent the survey back uncompleted and/or sent a letter explaining this. Being unfamiliar with all types of insurance products marketed in the state, we could not determine the accuracy of these statements.
- Twelve of fourteen HMO companies that returned surveys have used at least part of the processes of Chapter 54.
- Eight of 106 non-HMO companies that returned surveys have used at least part of the processes of Chapter 54. All eight have used 38.2-5407, seven of these eight have used 38.2-5408 for appeals, and four of these eight have used 38.2-5408 for expedited appeals.

- The majority of respondents who have used Chapter 54 were neutral about the process.

There are currently no regulations that are attached to the statute enacted under Chapter 54 of Title 38.2 of the Code of Virginia, which make it very difficult to enforce its provisions. In addition, as seen in the chart above, many of the provisions outlined by the National Association of Insurance Commissioners are not met by Chapter 54 as it stands.